

**United States Department of Labor
Employees' Compensation Appeals Board**

N.U., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
La Puente, CA, Employer**

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**Docket No. 18-1430
Issued: March 6, 2019**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 17, 2018 appellant, through counsel, filed a timely appeal from a June 6, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral hip and knee conditions causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On December 12, 2016 appellant, then a 61-year-old retired letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained neck, knee, and hip injuries as a result of performing his repetitive work duties for over 35 years at the employing establishment. He indicated that he stood while casing mail two to four hours a day and delivered mail at least six hours a day, which involved continuous twisting, walking, extended time standing on his feet, stepping in and out of a vehicle hundreds of times, lifting, and bending. Appellant indicated that he first became aware of his conditions and their relationship to his federal employment in December 2014. He noted that he was last exposed to his employment factors on December 28, 2013.

In an accompanying detailed narrative statement, appellant provided his employment history at the employing establishment and described the work duties he claimed were responsible for causing his neck, knee and hip conditions. He noted that from March 16 through June 15, 1979 he worked as a clerk, emptying bags and casing flats and letters. Appellant further noted that from June 16, 1979 through 2013 he delivered mail which involved casing flats and letters and walking. In 2000 he sustained a work-related injury and underwent rotator cuff surgery.³ Subsequently, appellant accepted an employing establishment job offer and began delivering Express Mail for business and residential customers in 2001. His work duties involved continuous twisting and turning at the hips up to eight hours a day plus overtime.

On the reverse side of appellant's claim form, the employing establishment noted that he had retired as of May 6, 2016. A Notification of Personnel Action (Form SF-50) indicated that appellant's last day in pay status was September 4, 2015.

OWCP, by development letter dated January 5, 2017, advised appellant of the factual and medical deficiencies of his claim. It provided a questionnaire for his completion to establish the employment factors alleged to have caused or contributed to his medical condition and date that he was last exposed to the claimed work factors, and requested a medical report from his attending physician explaining how and why his federal work activities caused, contributed to, or aggravated his medical condition. OWCP afforded appellant 30 days to submit the requested evidence. No response was received.

By decision dated February 16, 2017, OWCP denied appellant's occupational disease claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted factors of his federal employment. It noted that he did not respond to its January 5, 2017 development letter requesting medical evidence to establish his claim.

³ Appellant filed prior claims that were accepted by OWCP for right shoulder and cervical conditions.

OWCP received a prescription form dated February 10, 2017 from Dr. Scott Goldman, an attending Board-certified orthopedic surgeon.

On February 24, 2017 appellant, through counsel requested a telephonic hearing before an OWCP hearing representative regarding OWCP's February 16, 2017 decision. He submitted a medical report dated February 10, 2017 in which Dr. Goldman reported that appellant performed repetitive work duties as a letter carrier for over 35 years at the employing establishment, culminating in bilateral knee and hip injuries sustained at work on December 28, 2013. Dr. Goldman also reported that appellant had a history of bilateral knee arthroscopic surgery. He described findings on physical and x-ray examination. Dr. Goldman diagnosed bilateral knee and hip post-traumatic osteoarthritis, bilateral knee internal derangement, and bilateral hip trochanteric bursitis. He opined that, based on the available information, including appellant's history and physical and objective diagnostic findings, his bilateral knee and hip conditions were work related. Dr. Goldman maintained that his history indicated a continuous trauma-type industrial injury culminating on December 28, 2013 while working as a letter carrier.

Subsequently, OWCP received a report dated March 10, 2017 by Dr. Goldman. The report noted that appellant was evaluated for bilateral knee and hip injuries sustained on December 28, 2013 as a culmination of the work duties he performed as a letter carrier. The report also noted examination findings and provided diagnoses of bilateral knee and hip post-traumatic osteoarthritis, bilateral knee internal derangement, and bilateral hip trochanteric bursitis.

During the telephonic hearing, held on August 14, 2017, appellant testified that he was a letter carrier for 36 years and described his work duties. He related that he became aware of his knee pain about six years ago and thought that it was work related. Appellant initially testified that he had not seen a physician until the filing of his claim and he subsequently testified that he had not seen his physician until December 1, 2014. He maintained that the physician thought his condition was work related because he had swelling and bruising on his knees. Appellant indicated that he had filed other claims for left shoulder and neck injuries for which he was off work.⁴ He also testified that he had sustained a prior left knee injury as he stepped out of his vehicle to report to work, but did not file a claim.

In an August 28, 2017 letter, B.C., appellant's former supervisor, responded to the hearing transcript. He maintained that appellant was not performing letter carrier duties on the filing date of the instant claim. B.C. related that he had not performed regular letter carrier work since 1991. He noted that he supervised appellant at that time and assigned him limited-duty work that involved delivering Express Mail only until 1995, when B.C. left the employing establishment. Appellant returned to his regular-duty work for a short time and subsequently returned to his limited-duty Express Mail delivery assignment between the time B.C. left and returned as postmaster later in May 2009. B.C. contended that delivering Express Mail was very different from regular carrier work. Appellant did not case mail, which was contrary to his statement that he cased mail on his feet up to four hours. He did not use a mailbag which he claimed weighed

⁴ On May 15, 2017 OWCP received an August 19, 2015 magnetic resonance imaging (MRI) scan of the right shoulder, read by Dr. Shams F. Sheik, Board-certified in diagnostic radiology and neuroradiology, which revealed a partial undersurface tear versus postoperative change to the supraspinatus and no retracted rotator cuff tear, suggested a superior labral tear, and noted an osteoarthritic change of the acromioclavicular joint.

up to 70 pounds. Appellant did not perform park and loop deliveries which he claimed involved walking to 25 houses on each side of a street while carrying a mailbag. He also did not perform dismount deliveries as he claimed, which required him to step in and out of a vehicle that was 18 inches above ground. B.C. maintained that delivering Express Mail involved a lot of driving around the city to deliver an average of 30 to 50 pieces of mail to 50 different addresses in 4 different zip codes on any given day. When there were too many deliveries, appellant received help from another carrier to ensure that the scheduled delivery time was met. B.C. concluded that he could not understand how appellant attributed his injury to performing regular carrier work since he had not performed such work during the last 25 years of his postal career.

By decision dated October 30, 2017, an OWCP hearing representative affirmed the February 16, 2017 decision, finding that the medical evidence submitted was insufficient to establish that appellant sustained lower extremity conditions causally related to his actual work activities. She noted that evidence in his prior claims indicated that he performed limited physical activity since at least 1998. The hearing representative also relied on the employing establishment's statement that appellant performed limited-duty work dating back to 1991.

On March 23, 2018 counsel requested reconsideration. He submitted two letters dated March 9, 2018 from Dr. Goldman, who again opined that appellant's diagnosed bilateral hip and knee conditions were work related based on his history of performing repetitive work duties as a letter carrier for over 30 years and physical and objective examination findings. Dr. Goldman advised that it was medically necessary that he be evaluated and treated for these conditions on an industrial basis.

Subsequently, OWCP received a report dated December 29, 2017 from Dr. Goldman, who restated his bilateral knee and hip diagnoses.

By decision dated June 6, 2018, OWCP denied modification of the October 30, 2017 decision. It found that Dr. Goldman's reports provided an incomplete history regarding appellant's previous knee injury and an inaccurate and incomplete history regarding his actual work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

⁵ *Supra* note 2.

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁸ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁹ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹⁰

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral hip and knee conditions causally related to the accepted factors of his federal employment.

OWCP initially accepted as factual that appellant engaged in repetitive activities in his employment duties as a letter carrier. However, it subsequently found that his actual work duties involved delivering Express Mail in a limited-duty job assignment since 1991. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the accepted factors of his federal employment in an Express Mail assignment caused or aggravated bilateral hip and knee conditions.

Dr. Goldman, in reports dated February 10 and March 10, 2017 and March 9, 2018, diagnosed bilateral knee and hip post-traumatic osteoarthritis, bilateral knee internal derangement, and bilateral hip trochanteric bursitis. He opined that, based on appellant's history and examination findings, the diagnosed conditions were caused by continuous trauma-type work injury while working as a letter carrier for over 35 years. Dr. Goldman maintained that repetitive trauma while working as a letter carrier certainly explained the arthritic condition and internal derangement of the bilateral hips and knees. However, his reports are insufficient to establish appellant's claim because they are not based on a complete factual history and he did not provide adequate medical rationale in support of his opinion on causal relationship.¹² Dr. Goldman noted that appellant's letter carrier work duties were continuous and that they explained the development of his diagnosed conditions, but there is no indication that he was aware that since 1991 appellant

⁸ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁹ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

¹² *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

had performed limited-duty work which required delivering Express Mail and that appellant was no longer working at the employing establishment, as his last day of exposure to the limited-duty employment factors was December 28, 2013 and his retirement was effective as of May 6, 2016. B.C., appellant's former supervisor, related that appellant had not performed regular letter carrier duties since 1991, as he performed a limited-duty Express Mail delivery assignment through 1995 and again performed his Express Mail delivery assignment after a brief period of performing his regular letter carrier duties through the last 25 years of his postal career. Medical conclusions based on an incomplete or inaccurate factual background are of limited probative value.¹³

Dr. Sheik's August 19, 2015 report interpreted diagnostic findings and related partial undersurface tear *versus* postoperative change to the supraspinatus and no retracted rotator cuff tear, suggested a superior labral tear, and noted an osteoarthritic change of the acromioclavicular joint of the right shoulder. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.¹⁴

As appellant has not submitted rationalized medical evidence to support his claim that his bilateral hip and knee conditions were caused or aggravated by factors of his federal employment, he has not met his burden of proof.

On appeal, counsel contends that OWCP's June 6, 2018 decision is contrary to fact and law. For the foregoing reasons, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained bilateral hip and knee conditions causally related to the accepted factors of his federal employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish bilateral hip and knee conditions causally related to the accepted factors of his federal employment.

¹³ See *S.R.*, Docket No. 14-1086 (issued February 26, 2015); *M.W.*, 57 ECAB 710 (2006).

¹⁴ See *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board